UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1538
30 October 1996

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-eighth session

SUMMARY RECORD OF THE 1538th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 24 October 1996, at 3 p.m.

Chairman: Mr. AGUILAR URBINA

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Switzerland (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-18704 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Switzerland (continued) (CCPR/C/81/Add.8; HRI/CORE/1/Add.29)

1. At the invitation of the Chairman, the members of the delegation of Switzerland took places at the Committee table.

2. The CHAIRMAN invited those members of the Committee that had not yet done so to ask questions related to section I of the list of issues (CCPR/C/58/L/SWI/3).

3. Mr. BUERGENTHAL said that the decisions of the European Court of Human Rights were apparently applied in Switzerland as if they were domestic law, the decisions having been circulated to that end. He wondered if there was any plan to do the same with the decisions, views and general comments of the Committee, since that would help to give the Covenant a status in Swiss law similar to that of the European Convention.

4. The report stated (para. 93) that extradition was not granted unless the requesting State guaranteed that the person sought would not be executed or subjected to treatment violating his physical integrity. The paragraph referred, however, to a case in which a country had failed to honour such an undertaking, and he wondered what action the Government of Switzerland had taken and how Switzerland policed compliance with such undertakings after individuals had been extradited.

5. As for committal to mental institutions (para. 122), he did not understand whether the decision was a purely medical one or a judicial one, and he would welcome information regarding the safeguards procedure for such committals and whether there was judicial review of decisions to extend the length of detention for the individuals concerned.

6. He requested clarification of the statement made during the discussion of Switzerland's reservation to article 26 of the Covenant which seemed to say either that Switzerland did not have a general due-process clause in its Constitution or that such a clause was not necessary.

7. Mrs. EVATT said that Switzerland had a long-standing democratic tradition and respect for human rights and it was regrettable that it had entered reservations to the Covenant. The report (para. 486 et seq.) referred to the recognition given to specific minorities, but article 27 of the Covenant applied to all minorities and she wondered how Switzerland ensured the enjoyment by all its minority groups of the rights protected therein. For instance, a case had recently been reported of a Muslim teacher being refused the right to continue her work while wearing the head-covering, or foulard.

8. The establishment of the Federal Commission on Racism was a welcome development but racism and xenophobia constituted a serious and growing problem and she asked whether the Commission organized, or intended to

organize, programmes of community education and whether it had any conciliation function in relation to allegations of racial discrimination.

9. The abuses committed in the name of protecting the children of nomads (para. 489 of the report) had apparently ceased, with an official apology from the foundation concerned and compensation for the victims. She would like to know whether that compensation had resulted from the Swiss legal system and the basis on which it had been assessed and also whether the children of nomads were undergoing any other form of discrimination in terms of the application of juvenile justice or welfare laws, and whether they constituted a higher proportion of the total number of children removed from their families than their numbers warranted.

10. Switzerland was in the process of ratifying the Convention on the Rights of the Child and she wondered whether it had any plan to raise the age of criminal liability for children; the report (paras. 169 to 173) suggested that children as young as seven might be held in short-term detention in youth custody centres. Further information would be welcome.

11. It was not clear whether children born out of wedlock had equality in all aspects of their civil status, including the right to nationality by descent from their parents, the right to succession and the regime of parental custody.

12. She welcomed the Equality Act and other reforms and asked whether the divorce law had yet been reformed and whether it was intended to extend national service obligations to women. Finally, she wondered whether the reforms, and especially the Equality Act, would render it possible for Switzerland to withdraw its reservations to article 26, since paragraph 483 of the report noted that it was mainly women's inequality that had inspired it.

13. Mr. KRETZMER said that the Committee had not received a full answer to question (j) on ill-treatment of the person. It needed details of the internal mechanisms that existed to verify complaints. The weakest link in terms of the rights of the individual in the Swiss criminal process was between arrest and presentation before a judge, during which period the individual was not entitled to see a lawyer and access to family might be restricted. Information from NGOs alleged mistreatment of detainees at that stage. He would like to know what powers of arrest the police had and under what conditions, whether there were statistics on the number of people arrested and subsequently released without being charged and whether there was a supervision mechanism to ensure that the police did not arrest anyone except on grounds laid down by the law.

14. The report (para. 132) stated that the right to be brought before the competent authority without delay did not apply in the event of a decision to extend pre-trial detention; it would be interesting to know what the procedure was for deciding that pre-trial detention was going to be extended if the person detained did not have the right to be brought before the authority.

15. Mrs. MEDINA QUIROGA said that she had a number of questions regarding detention. What period elapsed between the arrest and the first questioning (para. 126) and between detention and provisional detention (para. 128)? What

steps were taken between arrest and the time when the arrested person was permitted to contact a lawyer, and how important was what happened during that period for the trial (para. 129)? Paragraph 133 stated that detention normally ended when it was no longer justified, but article 9 of the Covenant provided that persons should not be detained beyond "a reasonable time", and she wished to know what criteria were used to decide what was a reasonable time. Paragraph 133 also stated that the European Court of Human Rights had accepted that a detention period of four years and three days was not excessive, but it certainly went beyond the reasonable time stipulated in article 9.

16. It was important to know the criteria that were applied to decide when article 9 was being infringed because, in paragraph 180 of the report, it was stated that the conditions applicable to untried prisoners were more stringent with respect to visits, leave entitlements, leisure, training and correspondence than those applied to convicts. Combined with the fact that a person could be held in pre-trail detention for as much as four years and three days, that produced a situation that was clearly incompatible with the Covenant.

17. She wondered what was meant by the "detention of habitual offenders" (para. 146)? Were they serving a sentence, and how did the system function? Did the reference to such detention being a protective measure whose duration was at least two thirds of the sentence awarded (para. 149) mean that it was a part of the sentence or separate from it, and how did it work?

18. With regard to article 3 of the Covenant, she said she was pleased to note the progress that Switzerland had made in matters of equality between men and women, and she wondered what had been done to promote the necessary cultural change of attitude and what administrative and legal steps had been taken to equalize household duties between men and women. One of the main reasons why there were so few women in senior positions in Swiss life and in higher education was probably that they were responsible for the home and the children and not enough facilities had been provided to equalize domestic obligations. In that connection, she asked whether there was paternity leave in Switzerland, whether fathers could take time off work to care for sick children and whether child-care facilities were available to parents who were both employed.

19. Mr. LALLAH said that Swiss courts presumably applied the Covenant only to the extent that reservations had not been entered to certain provisions. He wondered what would happen, therefore, if the Committee should decide that a reservation was not valid and whether the courts would accept the Committee's decision or views.

20. With regard to the reservation to article 26, he noted that Switzerland was a party not only to the European Convention on Human Rights but also to all its Protocols, one of which related to the right to protection of property, a right that was not protected by the Covenant. He wondered, therefore, why Switzerland had not included among the rights protected by article 26 not only the Covenant rights but also those other rights it had

agreed to protect under the European Protocols so as to prevent discriminatory treatment of people in respect of their property rights on grounds of race, ethnic origin or sex.

21. It was most surprising that, in a country like Switzerland, an arrested person's access to family, lawyer and doctor was not guaranteed. Good and bad policemen existed, and there had to be some form of regulation. Article 2, paragraph 3, subparagraph (a), of the Covenant stated that violations of a person's rights or freedoms by persons acting in an official capacity had to be remedied, and the Committee's General Comment on article 7 stated that the protection of the detainee required that prompt and regular access be given to doctors, lawyers and family members. The first hours of detention were crucial for the physical integrity of the person in the hands of the State without any outside protection.

22. Paragraph 166 of the report stated that 45 per cent of the prisoners in Switzerland were foreigners, a fact that was attributable to the increased number of arrests of foreigners entering the country for the express purpose of committing offences. That might well be so, but he would like to know what proportion of that 45 per cent consisted of foreigners resident in Switzerland.

23. The CHAIRMAN, speaking as a member of the Committee, requested further information on the detention of habitual offenders and, more specifically, on what was meant by their detention being first and foremost a protective measure. It hardly seemed to be a measure designed to protect the habitual offender. He would also welcome clarification of the statement that the length of their detention was at least two thirds of the sentence awarded and whether that was in connection with a new offence or meant that the offender could not be released until two thirds of the sentence had been served.

24. Lastly, his own experience indicated that unequal opportunities for men and women in higher education and the upper levels of the public and private sectors in Switzerland were often due to unequal conditions with regard to child care.

25. Mr. HELD (Switzerland) said that his country had entered a reservation to article 26 of the Covenant in the interests of transparency and because of the limitations imposed by article 113 of the Constitution on the power of the Federal Tribunal to overturn legislation. Switzerland had not entered a reservation to article 14 of the European Convention on Human Rights since that provision mirrored the guarantees in article 4 of the Constitution, whereas, according to the Committee's general comment 18 (adopted 9 November 1989), article 26 of the Covenant provided in itself an autonomous right.

26. Switzerland's reservation was not a criticism of the Committee's jurisprudence but a means of accommodating an important feature of its constitutional and judicial system and averting the creation of varying degrees of protection under the various human rights instruments.

27. As to Switzerland's likely reaction if the Committee declared its reservation to article 26 - or to any other provision - inadmissible, the

European Court of Human Rights had done so with regard to certain Swiss reservations to European legislation and Switzerland had accepted that decision. It might well do likewise in the case of a decision by the Committee but, until a particular reservation was specified and reasons given for declaring it inadmissible, that was pure speculation.

28. The question had been asked why Switzerland had not included the right to protection of property among the rights protected by article 26. While parties could limit certain of their treaty obligations, they could not unilaterally expand the scope of an international instrument. As to whether the number of reservations lodged by Switzerland to the Covenant was excessive, he recalled that Switzerland had withdrawn its reservation to article 20, paragraph 2, in view of the entry into force of new provisions concerning racial discrimination.

29. It was for the courts to decide in specific cases whether the Covenant's provisions were directly applicable. The Federal Tribunal had, in fact, recognized the direct applicability of the guarantees emanating from the Covenant and had applied the Covenant's provisions in its own decisions.

30. On non-derogable rights, he said that Switzerland's understanding of article 4, paragraphs 1 and 2, of the Covenant, was that the non-derogable rights were those enshrined in articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18, while the other rights could be derogated from only if that did not entail discrimination of any sort.

31. As to whether legislation that ran counter to the provisions of the Covenant could be overturned by the Federal Tribunal, he said that, while that body was empowered to determine that cantonal legislation violated the Covenant and thus annul it, it could not annul a federal law because it was incompatible with the Covenant, although it could find to that effect. Its moral authority was such, however, that the offending law might well be withdrawn.

32. As to whether Parliament had already dismissed any civil servants, ministers or federal councillors from their posts and if so, how many, he said he had no statistics on the subject. A federal councillor whose spouse had been implicated in a criminal matter had recently been subjected to impeachment proceedings by the Chambers, but had resigned before the culmination of the proceedings. An option for legal action against federal councillors and civil servants thus existed, though fortunately such measures rarely needed to be applied.

33. Concerning the extradition case in which the relevant conditions had not been respected by the receiving Government, he did not know exactly what action his Government had taken but imagined that it would have protested against the violation and would be reluctant in future to grant extradition to the country concerned.

34. With respect to the protection of minorities other than linguistic ones, the Council of Europe had recently adopted a Framework Convention for the Protection of Minorities which Switzerland would ratify very shortly. As part of that process, it was currently considering the definition of a minority,

something that was not done in the Framework Convention. Once those deliberations had been completed, his Government would be in a better position to identify the scope of its obligations concerning minorities and the steps it should take with regard to their treatment.

35. Mr. SCHÜRMANN (Switzerland), referring to the principle of equality, as enunciated in article 4 of the Constitution, said that the intention was clearly that not only both men and women but also foreigners should be entitled to avail themselves of the guarantee of equality before the law. The wording of article 4 was somewhat outmoded, since it had been adopted 120 years previously. An update of the Constitution drafted in 1995, but not yet adopted, had the following wording for article 4: "Everyone is equal before the law. No one shall be subjected to discrimination on grounds of origin, sex, race, language, social status or religious, philosophical or political convictions." A third clause dealt specifically with equality of the sexes.

36. Did the mentally ill have the right to marry? Yes, in accordance with a provision of the Civil Code that had been interpreted in conformity with the Constitution, the European Convention on Human Rights and the Covenant. Under the draft revision of the divorce legislation currently before the Chambers, the provision would be abolished and, in the future, the ability to exercise one's own judgement would be the decisive factor.

37. A series of questions had been asked about police custody and pre-trial detention. There was no national penal code for Switzerland as a whole: each canton had its own penal code, and that made for many difficulties. Nevertheless, the decisions of the Federal Tribunal constituted a minimum standard valid for every canton. If a given canton's penal code did not provide for a certain guarantee, the decisions of the Federal Tribunal might very clearly outline such a guarantee.

38. He was unable to say whether pre-trial detention was used with undue frequency in Switzerland, since he had no appropriate statistics. The Federal Tribunal was very strict in applying the requirements for issuing a pre-trial detention order, however, which included the existence of serious suspicions of an offence and a reason for such detention, such as danger of collusion, of flight or repetition of the offence. In all cantons, the duration of police custody was restricted to 24 to 48 hours.

39. Remedies were available at the cantonal level and through a public-law action before the Federal Tribunal. In some cantons, the first appeal had to be addressed to the local administration, but any administrative decision could be appealed to a judicial authority.

40. In cases of pre-trial detention, ex officio legal counsel was made available, if necessary from the moment the preliminary investigation began. The provision of legal counsel from the outset of police custody was under serious consideration. It was argued, however that, by permitting premature contact between alleged offenders and legal counsel, such a measure might compromise criminal investigations.

41. Confessions obtained under duress could never be used in criminal proceedings. All cantons, to the best of his knowledge, had legislative provisions to exclude the use of such confessions.

42. Concerning the restrictions on the application of the general police clause, the Federal Tribunal had established three conditions that must be met: there must be a serious threat to public order, the situation must be sufficiently unpredictable to preclude timely action by the authorities and the measure must be implemented exclusively in a specific situation, time and place.

43. On the right to be brought a second time before a judge or other judicial authority in the event of a prolongation of detention, he said that a detainee could at all times make an application for discharge.

44. On the comment regarding the importance of due process during the period the accused was in police custody and was not entitled to legal counsel, he said that the rights of the accused must be guaranteed at the earliest stage of investigation and in respect of the use of any evidence in court.

45. The criteria for determining whether the duration of detention was reasonable were the same as those applied in respect of article 14 of the Covenant, namely, the complexity of the case, the behaviour of the authorities and the behaviour of the detainee. The case of pre-trial detention lasting for four years and three days had involved an economic crime of extreme complexity.

46. On security guarantees for habitual offenders, he read out a provision of the Penal Code which outlined the criteria for determining that a detainee had a tendency to delinquency.

47. Mr. LINDENMANN (Switzerland), replying to the question as to whether a child born of an adulterous relationship could be recognized, said that, under the Swiss Civil Code, a woman's husband was the presumed father of her child. Consequently, a third party could not recognize a child born in wedlock, though the husband himself, or the child, if the spouses ceased to maintain a conjugal relationship during his or her minority, could challenge the presumption of paternity in court. One of the main concerns of Swiss legislation was to ensure that all children had two legal parents.

48. Recognition of children adopted abroad was regulated by international instruments and Swiss legislation. If a child could be acknowledged as legitimate right away, that acknowledgment was immediately valid and there was no waiting period. If acknowledgment was not possible immediately, the adoptive parents could, under certain conditions, go through the adoption procedure again, so that a waiting period might be necessary.

49. Mr. BLOCH (Switzerland), replying to a question concerning guarantees against the ill-treatment of persons in police custody, said that all the allegations of ill-treatment made by NGOs, related to six cantons visited during the current year by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The cantons in

question were preparing their response to the allegations and a statement on the subject by the Federal Government would be published in March 1997.

50. With regard to questions concerning the right of a person in police custody to be examined by a physician of his or her choice, he said that, for security reasons and in view of the shortness of the period spent in police custody, there was no practical need to provide for such a right, which was not to be found in the Federal Constitution, the European Convention or the draft texts of a possible additional protocol to the European Convention. The right in question was thus clearly unacceptable to the States members of the Council of Europe and its refusal did not constitute a breach of human rights.

51. As for prison overcrowding, new prisons had been opened in 1994 and 1995 and overcrowding had since steadily diminished to the extent that, in February 1996, some prisons were no longer full.

52. In 1995, the daily average number of persons serving sentences of imprisonment had been 4,234, including 258 women, while the daily average number of persons detained prior to trial, by police order or pending extradition had been 1,993. The country's 172 penitentiary establishments had a total of 6,480 places.

53. Of the total number of persons serving sentences of imprisonment, 51 per cent were Swiss citizens and 49 per cent aliens, including 27 per cent resident in Switzerland and 22 per cent domiciled abroad. On the other hand, only 28 per cent Swiss, as against 72 per cent foreigners, had been held in pre-trial detention on 3 April 1995, 35 per cent of the foreign detainees being domiciled in Switzerland, 31 per cent in another country and 34 per cent having no known domicile.

54. In reply to a question concerning pre-trial detention asked by Mrs. Medina Quiroga, he said that the legal basis and modalities of the measure were set forth in the cantonal codes of criminal procedure. Persons were held in pre-trial detention when there was a serious indication of guilt, although no definitive conviction had been pronounced by a court. Under article 69 of the Penal Code, pre-trial detention was deducted from the eventual sentence passed provided that the convicted person had not, by his behaviour after commission of the offence, given grounds for pre-trial detention or its prolongation.

55. If the offender was sentenced to a fine, the judge could take pre-trial detention into account to an equitable extent. Statistics showed that pre-trial detention was deducted from the sentences of about 10,000 persons, or 15 per cent of all convicted persons, every year. The average term of imprisonment was 50 days while the average length of pre-trial detention was 5 days.

56. Mr. ZÜRCHER (Switzerland), replying to a question relating to school attendance by nomad children, said that the law required all children in Switzerland to have access to primary schooling. The difficulty was of a purely practical nature, in that Switzerland had no "flying schools" that

could follow nomad families on their travels during the summer months. When the parents settled down for the winter, the problem of school attendance by nomad children ceased to exist.

57. A question asked in connection with the maximum length of pre-trial detention seemed to have been based on a misunderstanding. The rule setting a maximum limit of 6 or 12 months applied not to pre-trial detention but to measures of constraint, which were applicable to aliens who had been refused the right of abode in Switzerland and who had committed clearly defined offences. Measures of constraint were not applied to all categories of foreigners and certainly not to those enjoying the right of abode. They could not be applied to children under 15 years of age.

58. As for the right of asylum-seekers to family reunification, no such right existed during the procedure of recognition of refugee status. However, if a foreigner arriving at the Swiss frontier claimed to have a spouse or close relative living in Switzerland whose application for refugee status was under consideration, that would be taken into account. Under article 7 of the Asylum Act, a refugee whose status had been recognized could be joined by his wife and minor children and, under special circumstances, by other close relatives. The right to family reunification was not extended to foreigners subject to an expulsion order.

59. Mr. VOEFFRAY (Switzerland), replying to a question about possible inconsistencies between the Covenant and decisions adopted on the basis of popular initiatives, said that such a possibility could not be ruled out in theory, but no popular initiative had been adopted that was contrary to the provisions of the Covenant. The Chambers could declare a popular initiative that was contrary to jus cogens to be inadmissible.

60. The Federal Commission against Racism had been set up by a decision of the Federal Council in August 1995 and had begun its work in September of that year. It was thus still too early to evaluate the Commission's work so far, but a campaign against racism and xenophobia in the schools and various work environments was scheduled for 1997. In May 1996, the Commission had given its views on the immigration policy of the Government, and it was consulted in connection with Switzerland's reporting obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

61. The Commission's terms of reference enabled it to intervene on its own initiative with organizations or private individuals and to study the phenomenon of racism and its causes in Switzerland. It had 19 members drawn from economic, political, educational and scientific circles, with representatives of the churches and minority groups.

62. Ms. PEYRO (Switzerland), replying to a question on inequalities between men and women in respect of divorce, said that savings acquired during a marriage were normally divided equally between the spouses. As for the so-called "second pillar" of supplementary old-age insurance, the rights of a wife who had not exercised a professional activity during marriage were not the same as those of the husband. Divorce law was at the centre of the review of the Civil Code that was currently taking place and one of the proposed

changes would correct that imbalance. The revised draft of the Civil Code had been approved by the Federal Council on 15 November 1995 and was currently awaiting the decision of the Chambers.

63. In reply to a question concerning the staff of the Federal Office of Equality Between Men and Women, she said that there were seven women working in the Office, one full-time and six part-time. Women had been represented in the Federal Council for the first time between 1984 and 1989 and had again been represented since 1993. At the federal elections in 1995, 43 women had been elected to the National Council (21.5 per cent of its members). Women's representation in the Council of States remained low, only 8 women, 17 per cent of the Council's members, having been elected in 1995.

64. As far as the Federal Administration was concerned, steps to improve the representation and professional status of women had been taken in 1992 and special programmes for the promotion of women were being developed. The number of women in responsible positions had progressed slightly in 1996.

65. Mr. CRITTIN (Switzerland) said that there were currently 1,060,000 foreigners with establishment or sojourn permits in Switzerland. That was 19 per cent of the population, the second highest percentage in Europe. Two-thirds of the foreigners were in possession of establishment authorizations, and one-third, held renewable sojourn permits.

66. Owing to the temporary nature of their work, seasonal workers had no right to unlimited sojourn in Switzerland and, still less, to family reunification. Family members could visit Switzerland on a tourist visa for three consecutive months or a total of six months in any one year. The Federal Council had announced on 15 May 1991 that it intended to abolish the status of seasonal workers so as to align Swiss law with European standards.

67. As for the status of foreign children brought to Switzerland for adoption in the event that the adoption process was abandoned, the sojourn authorization was renewed as necessary and no child was sent home if an adoption failed to go through. The problem was currently under consideration and it was hoped that the status of foreign candidates for adoption would be placed on a more solid basis.

68. Mrs. MEDINA QUIROGA, Mr. KRETZMER, Mr. BHAGWATI and Mr. BUERGENTHAL said that they had not received satisfactory answers to all of their questions.

69. Mr. CAFLISCH (Switzerland) said that his delegation would do its best to answer all outstanding questions at the next meeting.

70. The CHAIRMAN invited the delegation of Switzerland to reply to the questions in Part II of the list of issues (CCPR/C/58/L/SWI/3).

71. Mr. CAFLISCH (Switzerland) said that he would confine his remarks to those elements of the questions under Part II that had not already been answered.

72. In reply to question (a), he said that the cantons of Geneva and Vaud retained provisions for incommunicado detention in their codes of criminal

procedure solely with a view to reducing the risk of collusion in serious cases. All other cantons had abandoned the practice. In Geneva, the accused person was allowed to communicate with his lawyer; in Vaud such contacts were at the discretion of the judge. The maximum period of incommunicado detention was 8 days in Geneva and 10 days in Vaud, with the possibility of extension for a further 8 or 10 days respectively by the Indictments Chamber. The legislation in some other cantons permitted temporary restrictions on freedom of communication to prevent collusion or in the interests of the investigation. Appeal to a judicial authority was possible in all such cases.

73. In reply to question (b), he said that, under a recently drafted bill on federal criminal procedure, an arrested person held in police custody must be informed of his right to notify his family or other persons of confidence of his arrest. A number of cantonal codes of criminal procedure also made express provision for the exercise of that right.

74. In reply to question (c), he said that States enjoyed wide discretionary powers under international law in determining the conditions governing the entry, residence and establishment of foreigners, in their territory. With regard to the situation of foreigners admitted legally to Switzerland, he referred the Committee to paragraph 196 of the initial report.

75. In reply to question (d), he said that, under the Asylum Act, the status of refugee was granted to any person whose life, physical or mental health, or personal freedom was at risk in his or her country of origin or residence for reasons of race, religion, nationality, social origin or political opinions. The spouses and minor children of such individuals were also recognized as refugees. Refugee status was denied where the evidence adduced was deemed to be flimsy, contradictory or false.

76. The decision of the Federal Refugee Office could be appealed within 30 days to an independent appeals body under the supervision of the Federal Council and the Federal Assembly. Such an appeal had a suspensive effect.

77. The average time taken to reach a decision on requests for asylum had been 141 days in 1995. At the end of June 1996, 22.5 per cent of the requests submitted in 1995 were still pending. Following submission of the appropriate application, asylum-seekers were assigned a place of residence in Switzerland by the Federal Refugee Office for the duration of the proceedings. Asylum-seekers without means of subsistence were granted cantonal assistance. They could not take up gainful employment during the first three months following the submission of a request for asylum.

78. In reply to question (e), he said that, where a request for asylum was denied and expulsion was impossible, unlawful or unreasonable, the Federal Refugee Office granted a provisional residence permit. The principle of "non-refoulement" was also applicable under the asylum procedure and applicants could appeal a decision on expulsion in the same way as a denial of asylum.

79. In reply to question (f), he said that an alien holding a permit of sojourn could move freely within the canton concerned. Permission to move to

another canton depended on an assessment of the employment situation there by the cantonal employment exchange. Persons holding an establishment permit were free to change their place of employment, occupation and canton. The only restrictions on freedom of movement were designed to protect national security, public order, public health or morality and the rights and freedoms of other persons.

80. In reply to question (g), he said that, pursuant to a Federal Council decree of 24 February 1948 concerning political speeches by foreigners, aliens without an establishment permit required cantonal authorization to speak on a political subject in public or private meetings. No application for authorization had been denied in recent years and the decree's constitutionality and its conformity with the Covenant and the European Convention on Human Rights were hotly contested in Switzerland. In August 1996, the Council of State, endorsing a proposal by the Federal Council, had recommended that the 1948 decree be repealed when a proposed new federal law on internal security came into force.

81. In reply to question (h), he said that the Federal Civilian Service Act had come into force on 1 October 1996. A person opting for civilian service must provide convincing proof of ethical, religious or political motives requiring him to refuse military service on grounds of conscience. Decisions on admission to civilian service were taken by an independent non-military commission appointed by the Federal Public Economy Department. Appeals lay to the equally independent Appeals Committee of that Department. The period of civilian service was one and a half times that of military service. Civilian assignments involved work of public benefit in approved public or private institutions.

82. In reply to question (i), he said that the Federal Council was currently considering the possibility of withdrawing its reservations to article 6 of the European Convention on Human Rights, which were similar to its reservations regarding article 14 of the Covenant. Following recent decisions by the Council of Europe bodies and the Federal Tribunal, the Confederation and cantons were adapting their legislation to take account of the new situation. It was conceivable that the reservations to article 14 would become obsolete in the same context and be withdrawn.

83. In reply to question (j), he said that the question of accession to the Optional Protocol had been included in the legislative programme prepared by his Government for the period 1995-1999. However, he was not yet in a position to state when accession might be expected.

84. Mrs. MEDINA QUIROGA said she noted that, according to paragraph 364 of the report, the records of the administration were not accessible to the public unless there was an express legal rule to the contrary. As such records were an extremely rich source of information, she wondered whether any action had been taken to amend the existing rules.

85. According to paragraph 366 of the report, the Penal Code prohibited the dishonouring of Swiss emblems and insults to a foreign State. She wondered whether those prohibitions were a dead letter or whether they could still give rise to legal proceedings.

86. She failed to understand the meaning of the phrase "even if there is no express legal basis therefor" in paragraph 371, since it seemed to imply that the right of freedom of expression could be restricted in the case in point even without legal justification.

87. Referring to paragraph 459 of the report, she asked whether civic incapacity meant deprivation of both the right to vote and the right to stand for election. Was culpable insolvency an offence under the Penal Code and was civic incapacity imposed as a penalty in such cases? Detention in a penitentiary institution was cited as constituting grounds for civic incapacity. Did detainees who had not yet been sentenced fall under that heading? Lastly, how long could civic incapacity be expected to last?

88. Mrs. EVATT, referring to paragraph 121 of the report, asked whether the grounds for detention in psychiatric institutions would apply even if the individual concerned declined the assistance offered. Was there any provision for review of the decision to commit a person to an institution?

89. She asked for further particulars concerning the appointment or election of the judiciary, the duration of appointments and the compatibility of existing procedures with the independence of the judiciary.

The meeting rose at 6 p.m.